

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

FRED ROHRBACKER,
Plaintiff,

v.

MODERN CONTINENTAL COMPANIES, INC.,)
HARBOR CRUISES, LLC, BOSTON HARBOR)
CRUISES, A JOINT VENTURE,)
PROVINCETOWN PUBLIC PIER CORP., and)
PROVINCETOWN-MACMILLAN REALTY)
TRUST,)
Defendants.)

Civil Action No. 05-11562-RGS

ASSENTED TO MOTION TO VACATE DEFAULT

Defendant, Provincetown-MacMillan Realty Trust (the "Trust"), hereby moves that the default entered against it on October 25, 2005 be vacated. As grounds for this Motion, the Trust states:

1. The Plaintiff has alleged a claim in Count III of the Amended Complaint against the Trust for personal injury arising out of an alleged fall on which occurred on a pier which the Trust allegedly owned.

2. At the request of the Plaintiff, on October 25, 2005, this Court entered a default against the Trust because the Trust had failed to file a responsive pleading to the Amended Complaint.

3. Prior to the entry of default, the trustee of the Trust believed that the Trust was represented in this action by one of the lawyers whose appearance has been entered on behalf of the Co-Defendants.

4. Upon receiving a copy of the Notice of Default, the Trust immediately undertook an investigation of the reasons why a default was entered, including the nature and scope of any applicable insurance, and of the underlying facts alleged by the Plaintiff.

5. Good cause exists for the Court to enter an order vacating the default as the failure of the Trust to respond to the Amended Complaint was due to excusable neglect and because no party will be prejudiced as no discovery has been undertaken.

5. Furthermore, the Trust has defenses on the merits of the Plaintiff's claims

WHEREFORE, Defendant, Provincetown-MacMillan Realty Trust, respectfully requests that the Court grant the following relief:

1. Allow the Defendant's Motion to Vacate Entry of Default; and
2. Enter such other relief as the Court deems just and proper.

Provincetown-MacMillan Realty Trust
By its attorneys:

/s/ Kevin T. Smith
Kevin T. Smith
BBO #555507
MASTERMAN, CULBERT & TULLY
One Lewis Wharf
Boston, MA 02110
(617) 227-8010

DATE: November 17, 2005

Assented to:

Attorney for the Plaintiff
Fred Rohrbacker

Attorney for Defendant
Provincetown Public Pier Corp.

/s/ David J. Berg
David J. Berg

/s/ John J. Davis
John J. Davis

Attorney for Defendant
Modern Continental Companies

Attorney for Defendant
Boston Harbor Cruises, LLC, Boston
Harbor Cruises and Modern Continental Co.

/s/ Thomas B. Farrey
Thomas B. Farrey

/s/ Jeanne McHugh
Jeanne McHugh

CERTIFICATE OF SERVICE

I, Kevin T. Smith , hereby certify that I served a true copy of the above Defendant's Motion to Vacate Default, by first class mail, postage prepaid, to the following counsel of record:

Plaintiff

David J. Berg, Esquire
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109

Provincetown Public Pier Corporation

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Modern Continental Companies

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**Modern Continental, Harbor Cruises, LLC and
Boston Harbor Cruises**

Jeanne O. McHugh, Esquire
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/s/ Kevin T. Smith
Kevin T. Smith

Dated: November 17, 2005